



Ohio Administrative Code

Rule 3745-31-05 Criteria for decision by the director.

Effective: [March 11, 2023](#)

[Comment: For dates and availability of non-regulatory government publications, publications of recognized organizations and associations, federal rules, and federal statutory provisions referenced in this rule, see paragraph (AA) of rule 3745-31-01 of the Administrative Code titled, "referenced materials."]

(A) Permit-to-install or PTIO.

The director shall issue a permit-to-install or PTIO, on the basis of the information appearing in the application, or information gathered by or furnished to the Ohio environmental protection agency, or both, if the director determines that the installation, modification or operation of the air contaminant source will do all of the following:

(1) Not prevent or interfere with the attainment or maintenance of applicable ambient air quality standards.

(2) Not result in a violation of any applicable laws, including but not limited to the following:

(a) Emission standards adopted by the Ohio environmental protection agency.

(b) Federal standards of performance for new stationary sources adopted by the administrator of the United States environmental protection agency pursuant to Section 111 of the Clean Air Act and the regulations promulgated thereunder.

(c) Requirements pertaining to installation of major stationary sources or major modifications in attainment and nonattainment areas as contained in rules 3745-31-10 to 3745-31-27 of the Administrative Code.

(d) National emission standards for hazardous air pollutants adopted by the administrator of the



United States environmental protection agency pursuant to Section 112 of the Clean Air Act and the regulations promulgated thereunder (including 40 CFR part 61 and 40 CFR part 63).

(3) Employ BAT, when applicable, in accordance with the following:

(a) BAT shall be evaluated, determined and required in either the initial permit-to-install or PTIO issued for an air contaminant source or when a modification of the air contaminant source results in the issuance of a permit-to-install or PTIO, except the following:

(i) BAT is not required if the air contaminant source was installed before January 1, 1974, and has not been modified on or after January 1, 1974.

(ii) BAT is not required if the air contaminant source was installed or modified on or after August 3, 2006 and has the potential to emit, taking into account air pollution controls installed on the source, less than ten tons per year of emissions of an air contaminant or precursor of an air contaminant for which a national ambient air quality standard has been adopted under the Clean Air Act.

(iii) If the only requirement to obtain a permit-to-install or PTIO is due to one of the following, any existing BAT determination, when applicable, remains in effect and BAT shall not be reevaluated and redetermined:

(a) A modification as a result of the requirements of paragraph (M)(10)(a)(ii) of rule 3745-31-01 of the Administrative Code.

(b) The requirements of paragraph (F) of this rule.

(c) An administrative modification.

(iv) BAT is not required for any existing, new, or modified air contaminant source that is subject to a plant-wide applicability limit that has been approved by the director.

(b) For air contaminant sources subject to an existing BAT determination, BAT shall be reevaluated and redetermined when a modification of the air contaminant source occurs.



(c) Except as provided in paragraph (A)(3)(b) of this rule, BAT shall not be reevaluated and redetermined when a PTIO is renewed, notwithstanding a modification as defined in rule 3745-31-01 of the Administrative Code. However, any existing BAT determination remains in effect.

(d) BAT may be reevaluated and redetermined at any time, in accordance with the definition of BAT contained in rule 3745-31-01 of the Administrative Code, based on data available at the time the air contaminant source was initially installed or most recently modified, whichever occurs later.

(e) Any reevaluated and redetermined BAT shall be in effect upon completion of the physical change or change in the method of operation or, when a physical change for change in the method of operation is not applicable, upon issuance of the permit-to-install or PTIO. Prior to completion of the physical change or change in the method of operation or issuance of the permit-to-install or PTIO, any existing BAT determination remains in effect.

(f) When applicable in accordance with this rule, if any of the following apply to the air contaminant source, then the director shall determine BAT to be, at a minimum, equivalent to the limit contained within the applicable rule:

(i) Paragraphs (C) to (J), (K) with the exception of (K)(4), (L) to (N), (O) with the exception of (O)(2)(e), (P) to (R), (U) with the exception of (U)(2)(k) and (U)(2)(l), (V) to (X), (Y) with the exception of (Y)(2)(d) and (Y)(3), (Z) to (EE), and (DDD) of rule 3745-21-09 of the Administrative Code as the rule existed on January 1, 2006 as required in division (T) of section 3704.03 of the Revised Code.

(ii) Rules 3745-21-11 to 3745-21-16 of the Administrative Code as the rules existed on January 1, 2006 as required in division (T) of section 3704.03 of the Revised Code.

This determination shall be made on a pollutant by pollutant basis.

(g) If the only reason the rules contained in paragraphs (A)(3)(f)(i) to (A)(3)(f)(ii) of this rule do not apply is because the air contaminant source is located in a non-applicable county under the rules contained in paragraphs (A)(3)(f)(i) to (A)(3)(f)(ii) of this rule, then the director shall determine



BAT to be equivalent to the most stringent limit contained within the applicable rule regardless of the air contaminant source's location. This determination shall be made on a pollutant by pollutant basis.

(B) During operation, the air contaminant source shall be in compliance with applicable rules and laws or if either required by rule or when the director determines it is necessary, the owner or operator shall be required to submit an approvable compliance plan, as required by division (G) of section 3704.03 of the Revised Code, for incorporation into the permit terms and conditions. A compliance plan shall be approvable where it shows the following to the satisfaction of the director:

(1) Operation of the air contaminant source under the compliance plan will result in compliance with all applicable requirements and laws as expeditiously as practicable but no later than any date required by applicable law.

(2) All reasonable interim control measures are identified.

(3) Where applicable, is consistent with and at least as stringent as any compliance schedule contained in any judicial consent decree or administrative order to which the air contaminant source is subject.

(C) Conditional PTIOs.

If a new source that has been constructed, installed, located or modified in accordance with the provisions of a permit-to-install or PTIO, and otherwise in accordance with applicable law, is not subject to Chapter 3745-77 of the Administrative Code, is unable to comply with the terms and conditions of the permit or applicable law as of the date the source began operation, the director may grant a conditional PTIO to operate such source provided the owner or operator provides sufficient information to demonstrate the following:

(1) The period is used to remedy any defect which prevents such compliance and the applicant demonstrates that compliance with emission standards prescribed by applicable law will be achieved as expeditiously as practicable.



(2) Any reasonably available alternative operating procedures and interim control measures have been used or will be used to reduce excess emissions.

(3) The continued operation of the source pursuant to the conditional PTIO will not endanger or threaten to endanger human health.

Conditional PTIOs shall contain such terms and conditions as the Ohio environmental protection agency determines necessary and appropriate.

(D) Special terms and conditions including federally enforceable limitations on potential to emit.

The director may impose such special terms and conditions as are appropriate or necessary to ensure compliance with the applicable laws and to ensure adequate protection of environmental quality.

(1) Special terms and conditions necessary to ensure compliance with requirements mandated by the Clean Air Act, which include regulations promulgated by the administrator there under, include synthetic minor emissions unit terms and conditions issued in a permit-to-install or PTIO or Federally Enforceable PTIO (FEPTIO). Such terms and conditions shall be federally enforceable and may restrict a stationary source's potential to emit below major source thresholds, below thresholds for other Clean Air Act requirements, or place other restrictions on an air contaminant source or stationary source in order to avoid a Clean Air Act requirement. Federally enforceable terms and conditions, including limitations on the potential to emit of a source, shall be designated as such through one of the following:

(a) Terms and conditions of a final permit-to-install issued under this chapter.

(b) Terms and conditions of a final FEPTIO issued under this chapter.

[Comment: In 59 FR 53586, October 25, 1994, (as revised in 60 FR 55200, October 30, 1995), the United States environmental protection agency approved rule language providing for the creation of a program for issuing federally enforceable state operating permits. See former rule 3745-35-07 of the Administrative Code as existed on November 3, 2006. That approved rule language has been incorporated in paragraphs (D)(1) to (D)(4) of this rule. Consequently, such designated terms and



conditions imposed in an FEPTIO under the approved program elements contained in the language of paragraphs (D)(1) to (D)(4) of this rule will be considered federally enforceable as of the effective date of this rule, unless and until the United States environmental protection agency later disapproves the language.]

(c) Rules or orders of the director that are submitted to and approved by the administrator as revisions to the Ohio state implementation plan under section 110 and 112(l) of the Clean Air Act.

(2) In order to be federally enforceable, a limitation on the potential to emit of an air contaminant source or stationary source shall do the following:

(a) Specify an annual limit on emissions from the source.

(b) Specify a short-term limit on emissions for each pollutant to be restricted, and specify a short-term limit on production or operation, provided that for purposes of limiting potential to emit, acceptable short-term limitations on production or operation shall include but not be limited to one of the following:

(i) A thirty-day summation limitation or three-hundred and sixty-five day rolling summation limitation computed each calendar day.

(ii) A monthly limitation.

(iii) A rolling twelve-month summation limitation.

(c) Specify adequate and enforceable methods for establishing compliance with the annual and short-term limits, using methods from 40 CFR part 60, appendix A or 40 CFR part 51, appendix M where appropriate.

(d) Be no less stringent than any federally applicable requirement to which the source is subject.

(e) Be contained in a permit first issued as a draft or proposed action with an opportunity for public comment under rule 3745-49-05 of the Administrative Code with concurrent notice and opportunity



for comment given to the administrator of the United States environmental protection agency region five. During the public comment period, if the administrator objects that the terms and conditions of the permit are not federally enforceable, the director shall not issue the permit until such objection has been resolved.

(3) Only those terms and conditions issued in a permit under this chapter and in accordance with paragraph (D)(2) of this rule that are necessary to avoid a Clean Air Act requirement, including a limitation on the potential to emit of an air contaminant source or stationary source, and expressly designated as federally enforceable, shall be federally enforceable.

(4) Upon the request of the owner or operator, any of the mechanisms provided in paragraph (D)(1) of this rule shall allow for trading of emissions increases and decreases among air contaminant sources located at the same stationary source that is consistent with the Clean Air Act for the purpose of complying with a federally enforceable cap on the potential to emit of the source. Such limitations shall ensure that the trades are quantifiable and enforceable and require seven-day advance notification to the appropriate Ohio environmental protection agency district office or delegated local air agency.

(5) Relaxation of federally enforceable limitations.

At such time that a particular stationary source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any federally enforceable term and condition or limitation established after August 7, 1980, on the capacity of the stationary source or modification otherwise to emit an air pollutant, such as a restriction on hours of operation, rules 3745-31-10 to 3745-31-27 and 3745-31-32 of the Administrative Code shall apply to the stationary source or modification as though construction had not yet commenced on the stationary source or modification.

(E) State-only enforceable limitations.

The director may impose terms and conditions necessary to ensure compliance with any provisions of the statutes or regulations of the state of Ohio that are not mandated by the Clean Air Act or regulations adopted by the administrator thereunder, but such terms and conditions shall be



enforceable as state law only, and shall be designated as such in the permit-to-install, PTIO or FEPTIO.

(F) Voluntary limits on allowable emissions.

The owner or operator of any air contaminant source may apply for a permit-to-install or PTIO to voluntarily limit the allowable emissions from the air contaminant source or limit the type of air contaminants authorized to be emitted from the air contaminant source. In such cases, the director may impose such special terms and conditions to ensure compliance with the voluntary limit on allowable emissions. The director shall act upon such application in accordance with the requirements of this rule, provided that paragraphs (A)(3) and (I) of this rule shall not apply unless the application is for the installation of a new source as defined in rule 3745-31-01 of the Administrative Code or is for a modification of an air contaminant source as defined in rule 3745-31-01 of the Administrative Code.

(G) Express permit-to-install or express PTIO processing.

(1) An applicant whose air contaminant source meets the following criteria may request in writing that the air contaminant source's application receives express permit-to-install or express PTIO processing as defined in rule 3745-31-01 of the Administrative Code. In order to be considered for express processing, the air contaminant source owner or operator shall do the following:

(a) Apply for a permit-to-install or a PTIO for a source undergoing installation or modification as defined in rule 3745-31-01 of the Administrative Code.

(b) Submit a complete permit-to-install or PTIO application.

(c) Demonstrate compliance with all applicable law.

(d) Have maximum uncontrolled emissions as defined in rule 3745-31-01 of the Administrative Code of less than five tons per pollutant per each year for particulate matter, sulfur dioxide, nitrogen oxides, and OCs.



(e) Not be subject to the United States environmental protection agency new source performance standards.

(f) Not be subject to the national emission standards for hazardous air pollutants or a United States environmental protection agency promulgated standard for HAPs.

(2) The issuance of an express permit-to-install or express PTIO does not relieve the applicant from compliance with any applicable air pollution control requirement and is at the discretion of the director.

(H) In deciding whether to grant or deny a permit-to-install or PTIO, the director may take into consideration the social and economic impact of the air contaminants, water pollutants, or other adverse environmental impact that may be a consequence of issuance of the permit-to-install or PTIO.

(I) The director shall coordinate the review and issuance of an air pollution permit-to-install or PTIO with any other relevant Ohio environmental protection agency permit-to-install program. This coordination of an individual permit-to-install or PTIO shall involve the identification of materials to relevant programs and the coordination of the granting or denying of program separate or program combined permit-to-installs or PTIOs. A coordinated review and issuance of an air pollution permit-to-install or PTIO for an air contaminant source is typically needed for the following types of air contaminant sources and would be coordinated with the following divisions:

Air Contaminant Source Type	DMWM	DSW	DDAGW	DERR
Composting Facility	X	X	X	
Degreasing/Cold Cleaning		X		X
Dry Cleaning		X		X
Gasoline Dispensing Facility		X		X
Infectious Waste Facility	X	X		
Liquid Material Storage Tanks		X	X	X



Loading Rack		X		X
Painting Operations		X		X
Printing Operations		X		X
Sanitary Landfill	X	X	X	
Solid Waste Incinerator	X	X		
Solid Waste Transfer Facility	X	X	X	
Sources with Baghouses				X
Sources with Electrostatic Precipitators				X
Sources with Scrubbers		X		X
Hazardous Waste Management Unit		X	X	X
Hazardous Waste Recycling Facility		X	X	X

DMWM - division of materials and waste management; DSW - division of surface water; DDAGW - division of drinking and ground waters; DERR - division of environmental response and revitalization

The director may consult with other Ohio environmental protection agency programs or other persons as the director deems appropriate.